

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**September 20, through September 26, 2019**

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

BALKMAN (EVERETT D.), PEOPLE v:

4<sup>th</sup> Dept. App. Div. order of 3/22/19; affirmance; leave to appeal granted by Wilson, J., 9/9/19;

**Crimes--Unlawful Search and Seizure--Whether the police had reasonable suspicion to stop a vehicle in which defendant was a passenger based on a computerized alert indicating the existence of a "similarity" between the registered owner of the vehicle and a person with an active arrest warrant;**

County Court, Monroe County, convicted defendant, upon his plea of guilty, of second-degree criminal possession of a weapon; App. Div. affirmed.

BIACA-NETO, et al. v BOSTON ROAD II HOUSING DEVELOPMENT FUND CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 8/13/19; affirmance; Rule 500.11 review pending;  
**Labor--Safe Place to Work--Whether plaintiff was sole proximate cause of his injuries, thereby warranting dismissal of the claims for common-law negligence and violations of Labor Law §§ 200, 240; plaintiff fell while exiting scaffold and entering building through window opening; whether plaintiff raised an issue of fact as to violation of the Industrial Code, as required to support claim under Labor Law § 241(6);**

Supreme Court, New York County, denied plaintiffs' motion for partial summary judgment as to liability on the Labor Law § 240 claim and granted defendants' motion for summary judgment dismissing the complaint; thereafter, dismissed the action; App. Div. affirmed.

ELTINGVILLE LUTHERAN CHURCH v RIMBO, &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/31/19; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
**Religious--Corporations and Associations--Judicial Review--Whether Supreme Court lacked subject matter jurisdiction over internal church dispute; Religious Corporations and Associations--Determination of Claim to Real Property--Whether church was entitled to injunctive relief to prevent seizure of property;**  
Supreme Court, Richmond County, granted defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint; App. Div. affirmed.

GARCIA (CESAR), PEOPLE v:

App. Term, 1<sup>ST</sup> Dept. order of 6/3/19; affirmance; leave to appeal granted by Wilson, J., 8/29/19; Rule 500.11 review pending;

**Crimes--Right to Jury Trial--Whether defendant was entitled to a jury trial where he was charged with one or more crimes that may have subjected him to deportation, but convicted of single crime that was not deportable offense; retroactive application of People v Suazo (32 NY3d 491 [2018]);**

Criminal Court of the City of New York, New York County, convicted defendant of public lewdness and imposed sentence; App. Term affirmed.

HARRIS (WILLIE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 6/25/19; affirmance; leave to appeal granted by Renwick, J., 9/3/19; Rule 500.11 review pending;

**Crimes--Unlawful Search and Seizure--Whether exigent circumstances justified warrantless search of a closed container incident to defendant's arrest;**

Supreme Court, New York County, convicted defendant of criminal possession of stolen property in the fourth degree and imposed sentence; App. Div. affirmed.

JUAREZ, et al., MATTER OF v NEW YORK STATE OFFICE OF VICTIM SERVICES, et al.:

3<sup>rd</sup> Dept. App. Div. order of 1/31/19; modification; leave to appeal granted by Court of Appeals, 9/12/19;

**Administrative Law--Rule Making--Whether New York State Office of Victim Services exceeded its authority under Executive Law article 22 to adopt regulations for the approval of crime victims' counsel fee requests by amending its regulations to provide that such awards may be considered only for fees incurred in successful administrative reconsideration reviews and judicial review (9 NYCRR 525.9 [a],[c]);**

Supreme Court, Albany County, among other things, partially granted respondents' motion for summary judgment dismissing the complaint; App. Div. modified by reversing so much of the judgment as granted respondents' motion for summary judgment dismissing (1) that part of the petition/complaint as sought a declaration that 9 NYCRR 525.9 as amended improperly limits counsel fee awards by respondent Office of Victim Services to those incurred in administrative appeals and/or judicial review, and (2) that part of the petition/complaint as sought to annul the amended regulations to that extent; denied the motion to said extent; annulled said amendments to 9 NYCRR 525.9; remitted the matter to said respondent for reconsideration of the applications for counsel fee awards; and as so modified, affirmed.

MANKO v BROOME, &c., et al. (INDEX #20555/2010):

2<sup>ND</sup> Dept. App. Div. order of 8/7/19; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

**Appeal--Appellate Division order affirming Supreme Court's denial of motion to vacate prior order of that Court;**

Supreme Court, Kings County, among other things, denied that branch of plaintiff's motion which was to vacate an order of the same court dated 1/19/11, granted that branch of the motion of the defendant Bernard H. Broome which was pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against him, and denied the plaintiff's cross motion, among other things, for leave to enter a default judgment against defendants Bernard H. Broome and Law Office of Bernard H. Broome, PLLC; App. Div. affirmed.

MANKO v GABAY, &c., et al. (INDEX #25157/10):

2<sup>ND</sup> Dept. App. Div. order of 8/7/19; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

**Appeal--Appellate Division order affirming Supreme Court's denial of motion to vacate prior order of that Court;**

Supreme Court, Kings County, among other things, denied that branch of plaintiff's motion which was pursuant to CPLR 5015 to vacate an order of the same court dated 5/7/12; App. Div. affirmed.

TOLAND, MATTER OF v MOYNIHAN, &c.:

3<sup>RD</sup> Dept. App. Div. order of 8/8/19; denial of motion; sua sponte examination of whether an appeal lies to the Court of Appeals from the Appellate Division order, dated 8/8/19, and whether the order finally determines the proceeding within the meaning of the Constitution;

**Appeals--Appealable Paper;**

App. Div. denied motion to proceed as a poor person.

OLDS (LESLIE K.), PEOPLE v.:

County Court, Niagara County order of 7/31/18; affirmance; leave to appeal granted by Wilson, J., 8/28/19;

**Crimes--Sentence--Whether the sentence imposed was vindictive; whether defendant preserved for appellate review the issue of vindictiveness;**

Niagara Town Court, convicted defendant, upon his plea of guilty, of endangering the welfare of a child, and sentenced him to one year in county jail; County Court affirmed.